

The CURE

Contract User's Resource for Excellence

The "CURE" is a quarterly newsletter of the State Controller's Office

Volume 8, Issue 3


November 2002

News From The SCO A State Controller's Office Update

CCIT MEETING

The November CCIT (Colorado Contract Improvement Team) meeting will be held on Wednesday, November 20th from 9:00 a.m. - 12:00 in Building 100 at Camp George West. Camp George West is located just East of Golden on Old Golden Road. The address is 15055 So. Golden Road. If you have questions about the meeting, please call a member of the Central Contract Unit. A map is located at www.sco.state.co.us/cure.cure.htm.

We have a full agenda — please see the last page of this issue of the CURE.



What's Inside
this Issue

The latest on insurance requirements (page 5)
Meet our newest CATF Member—Steve Smith (page 6)

E-MAIL ADDRESS CHANGES

To make sure you do not miss an issue of the CURE or other important state contract information be sure that you keep your e-mail address current by sending changes to Kevin in the SCO CCU at:
kevin.cruise@state.co.us

Central Approvers Names and Numbers

NAME	PHONE #	FAX #
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Department of Personnel & Administration (DPA)

State Controller's Office (SCO)

Central Contract Unit:	Phone Number	Fax Number
Phil Holtmann	303-866-3809	303-866-4233
Yvonne Anderson	303-866-2862	303-866-4233

Routing, Distribution and E-mail Updates:

Kevin Cruise	303-866-2127	303-866-3569
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Statutory Violations:

John Ivy	303-866-3765	303-866-3569
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Human Resource Services (DPA/HRS)

Personal Services Review Program:

Joi Simpson	303-866-5496	303-866-2458
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State Buildings and Real Estate Programs

Carol Lieber (SBREP)	303-866-3158	303-894-7478
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Donna Barr (REP)	303-866-4564	303-866-2201
Clark Bolser (REP)	303-866-4759	303-866-2201
Bob Marshall (REP)	303-866-2204	303-866-2201

State Purchasing (SPO)

Kay Kishline	303-866-6100	303-894-7440
Monica Rahman	303-866-6155	303-894-7440

Office of the Attorney General (AGO)

Robert Bowers	303-866-5027	303-866-4139
Bea Pagette	303-866-5227	303-866-4139
Steve Smith	303-866-5142	303-866-4139

NOTE: You may e-mail any of the above by using the following format: **firstname.lastname@state.co.us**

Personal Services Update

By Joi Simpson, DPA/HRS

Personnel Certificate Program Training (PCP)

The ultimate goal for this process is to improve the quality of the program and to get the personal services review where it belongs. Purchasing and contracting personnel have been performing this review for years and it's out of their scope of responsibilities. This goal **is separate** from delegation.

To date over 100 human resources, purchasing and contracting professionals have participated in the PCP Personal Services contracts training. HR professionals will be the only individuals eligible for certification. Certification works like this:

- Complete the classroom training.
- Identify how your agency's internal review process works. This is a cooperative effort between purchasing, human resources and contracting personnel.
- Determine how the agency's HR review will be integrated into the agency's overall contract review process and communicate to appropriate internal personnel.
- HR professionals begin reviewing contracts, purchase orders and solicitations as soon as possible.
- Submit a letter to DHR from the supervisor requesting certification. This letter should indicate the number of contracts, variety of request reviewed, the degree of difficulty and overall experience with the review process. (We recommend a six-month review period at a minimum. Some agencies will vary depending on the size of the organization and purchasing volume.)
- A PCP certificate will be issued if the above requirements are met.

As of July 15, 2002 all agencies are required to have the Human Resource offices review and complete the *Certification for Personal Services Agreements* and *Modification for Personal Services Agreements* form before submitting to Department of Personnel & Administration, Division of Human Resources (DHR) for **final** review and approval. Requests received without a signature from an HR professional will be delayed.

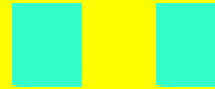
Delegation

We have begun exploring the feasibility of delegating the personal services review process. The PCP Personal Services Certification **is not** delegation of DPA's authority of review and approval of personal services agreements. All contracts, purchase orders and solicitations must be submitted for final review and approval by DHR unless your agency has a current program waiver in place.

In order for delegation to come to fruition some of the following steps include:

- Agencies must have an in-house review process established that involves HR.
- HR professionals involved in the process must have a PCP certificate.
- DHR will begin working on the issue of delegation and explore any additional requirements needed to move this initiative forward.
- Auditing and oversight processes established by DHR.
- Have an established review process at the agency level that ensures HR professionals are applying rules and law appropriately.

Personal Services Review Program article continuation



Future Training

Additional PCP Personal Services Contracts sessions will be scheduled for sometime in January. When the training dates have been established, notice will be published. To put your name on the waiting list, please contact Judi Karg at 303.866.2391 or judi.karg@state.co.us.

Follow up training will be scheduled for sometime in November to address specific issues and questions. Now that this process has been in place for a few months, we would like to hear about what's working, what's not working, how can the process be improved and what do you need from us to help you through this process? If you have specific areas that you would like addressed in this session, please contact Joi Simpson, Personal Services Contracts Specialist at 303.866.5496 or joi.simpson@state.co.us.

Personal Services Annual Report

Agencies no longer need to maintain separate databases for purposes of compiling the Personal Services Annual report. It is estimated that the new verification process has eliminated over 4000 hours of agency and DHR staff time to compile this report.

A note of recognition and thanks goes out to the following individuals whose participation was essential to making this process "over simplified". Karen Devereaux, Human Services; Yvonne Anderson, Don Fowler and Phil Holtmann, Department of Personnel and Administration; Robb MacTavish, Department of Regulatory Agencies; Roberta Miller, Auraria Higher Education Center; Roger Thomte, Department of Revenue; Ruth Crawford, Samantha Tanner and Kay Weber (the programmers) Department of Personnel & Administration; Charlie Vanderlinden, Military Affairs.

For the 2001-2002 report, 11 agencies requested changes to the final report. We have identified some problems with the reporting process which include, IT transactions being included in the summary totals, one agency couldn't use the process at all, PV's are included in the summary totals, and the Financial Data Warehouse itself can be very slow in uploading information.

IT transactions will be subtracted manually from the report for all agencies. The rest of these issues will be addressed in the coming months with the programmers to correct the problems for next years reporting.

In addition, there are new COFRS codes for information technology type transactions. 1960 and 1961 are identified as the object codes for personal services agreements.

Cost Analysis

The new and improved *Cost Analysis*, now the ***Cost Comparison Worksheet***, will be released by the end of October. The new cost comparison will better reflect business components that are essential to establishing a true cost comparison for state programs.

The draft cost comparison was sent to a select audience to review the instructions and test the new form for glitches or problem areas. The feedback was limited; however, the responses we received were very valuable and the suggestions will be taken into consideration. Training on completing the form will be provided during the November CCIT meeting.





ROUTING POLICY REMINDER

By Monica Rahman, SPO, Head Buyer

The question has been raised recently concerning which contracts and amendments require routing through the State Purchasing Office (SPO) for approval. The current SPO policy is as follows.

Requirements For Group I Agencies:

- a. All new contracts over \$50,000 (except interagency, intergovernmental, and capital construction).
- b. Contracts under \$50,000 if they result from a solicitation that was published by SPO on behalf of the particular agency or a Sole Source Form that was signed by SPO.
- c. Deviations from the original contract, solicitation or Sole Source Form, amendments to the contracts described above regardless of the dollar value associated with the change. Changes that require SPO approval are: extension of a contract beyond the stated time period or number of optional renewals, changes in scope of work, and price increases not allowed by the terms of the original contract. (Other amendments normally do not require SPO approval.)

These Do Not Require State Purchasing Office Approval, But SPO Would Like to Have a Courtesy Copy After the Contract Process Has Been Completed:

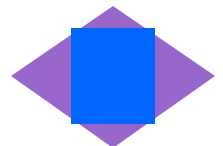
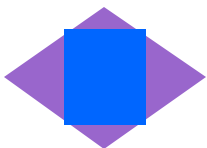
For any agency (*Group I or Group II*): If the contract results from a *cooperative procurement, involves multiple agencies* **or** *includes wording allowing other agencies to tag on*, the State Purchasing Office requests that a copy be sent to us after the contract process has been completed. We would simply like to have this information so that we can respond to questions from other agencies, share it with agencies that may have similar requirements, or even use it as the basis for a possible price agreement. Your assistance in this would be greatly appreciated.

Additional Notes:

If the vendor selection is based on a sole source, please be sure to include a copy of the Sole Source Form (that was pre-approved and signed by State Purchasing Office) with the internal documents that accompany the routed contract. This will help us expedite the approval process. Thank you in advance for this courtesy.

The State Purchasing Office reviews and approves a contract primarily in regard to the vendor selection process. The State Purchasing Office's policy is to approve contracts within 3 business days from the time they arrive in our office, assuming that there are no serious questions or no research is involved. If everything is in order, we are usually able to approve contracts and amendments and send them on their merry way even more quickly. (We are often able to complete the approvals the same day we receive them.)

If you have any questions regarding the reasoning behind the requirements listed in this article or have any other concerns, please feel free to call me at 303-866-6155. I would be happy to talk with you.



AG Notes

By Steve Smith, AGO

Issues Relating to Satisfactory Evidence of Contractors' Insurance: Occurrence vs. Claims Made Insurance Policies

The State of Colorado's standard contract form contains explicit Contractor insurance requirements. Contractors are required to provide proof of general liability, personal injury, professional (where applicable), automobile and workers' compensation insurance. The coverage must provide combined single limit (\$600,000) and aggregate (\$1 million) coverage. The State is to be included as an additional insured on the policy and the Contractor is provide proof of compliance with these requirements upon execution of the contract. Proof of compliance is usually provided on a standard insurance industry form called the ACORD form, which is prepared by an agent for the insurer issuing the insurance policy to the Contractor.

Insurance policies usually are in force for one year from the date of issuance, and are either occurrence or claims made policies. Occurrence policies provide insurance for claims arising during the term of the policy, regardless of when the claim is filed. A claims made policy only covers claims filed *during the term of the policy*. A claim filed one day after the termination of a claims made policy would not be covered. The State generally requires a two-year "tail" policy to continue coverage for claims made after termination of the contract. This two-year requirement is based on the fact that the statute of limitations for commencing most tort actions is two years from date of the event giving rise to the claim.

Claims made policies are standard for certain professions such as medical and legal malpractice insurance. Occurrence contracts are not generally available for these professionals. If available, occurrence coverage is usually more expensive than claims made coverage, due to the open-ended nature of the risk the insurance company is assuming.

From the State's perspective, occurrence policies, if available, are preferable. Claims made policies create contract management issues in addition to those associated with occurrence policies. Among these issues are: (1) active post-termination contract management to ensure tail coverage remains in effect; (2) enforcing purchase of tail coverage after the Contractor has been paid, and; (3) sufficiency of protection for the State and innocent third parties.

As an example of issue no. (3) above, two-year tail coverage for a Contractor working with at risk youths or persons under a disability may be inadequate. Section 13-80-103.7, C.R.S., creates a *minimum* six-year period in which a child or a person under a disability may commence a civil action for sexual abuse. While the sovereign immunity doctrine may limit or eliminate the State's liability in such a case, the State can assist in ensuring that persons receiving care pursuant to a State contract have adequate recourse in the event of abuse. There is no guarantee that the Contractor will be solvent or in existence at the time suit is actually filed. That risk is minimized under occurrence policies, *if* the state has notice of the claim (which it should receive if named as an additional insured) and a copy of the Acord form as required by the contract.

In summary: (continued from page 5)

1. Determine if occurrence insurance coverage is available to a category of Contractor. Most insurance brokers, or the Contractors themselves, should be able to tell you this.
2. If occurrence coverage is available and not prohibitively expensive, consider making occurrence coverage the required coverage.
3. If claims made coverage is provided, consider the appropriate length of the tail coverage based on the type of risks involved. If the Contractor is providing services to children or persons under a disability, two-year tail coverage may not be enough.
4. Consider how your agency will manage both monitoring compliance and enforcing the tail coverage requirement if the Contractor defaults. Perhaps the agency could require proof of tail coverage prior to making final payment under the contract.
5. Remember that, by requiring adequate insurance coverage, your agency is not only protecting the State, it is also protecting innocent third parties that may be injured by the Contractors negligence.

NEXT ISSUE: Tips on what to look for in the ACORD insurance form.



WELCOME ...
STEVE SMITH

.....our new **Assistant
Attorney General**

Steve began his career with the Attorney General's Office in 1991. His primary client was the Division of Insurance and also worked on Taxpayer Bill of Rights and North American Free Trade agreement issues and asbestos bankruptcy claims. In 2000, he joined the Anthem Blue Cross Blue Shield team as Senior Counsel. He managed litigation for Anthem's western region and also worked on benefit, membership and member appeal issues and contracts with agents and brokers. In September 2002, Steve rejoined the Attorney General's Office representing the Department of Personnel and Administration and is performing contract review. Steve also spent several years in private practice specializing in commercial law and business bankruptcies. He earned his J.D. in 1978 at the Indiana University School of Law in Bloomington, Indiana, and was admitted to the Colorado bar the same year.

Steve loves to SCUBA dive, read and enjoys Spanish classes. He also volunteers at the Children's Hospital information desk on Saturday afternoons. In addition, Steve serves as a Special Events Journey Guide, diver and community events speaker for Colorado's Ocean Journey aquarium.

IMPORTANT REMINDERS...

TRAINING NOTE: Contract management and contract writing is available through the State's Training Academy. **All contract personnel** are highly encouraged to attend these classes. So... if you are new to the state system or you are in need of a refresher course, please sign up today. Classes are on-going and can be tailored to meet agency needs. For more information, please call Brad Mallon at 303.866.4265.

REAL ESTATE FORMS NOTE: Don't forget that the Lease Extension Agreement form formerly used to extend the term of a Lease Agreement for state tenants **is no longer being used**. As of July 1, 2002, agencies and institutions should be using the Amendment to Lease form for all lease amendments, including extension of the lease term. If you have any questions about this policy change, call Donna Barr, Real Estate Asset Manager at 303-866-4564 or Clark Bolser, Real Estate Specialist at 303-866-4759.

On the World Wide Web at :

www.sco.state.co.us/

CONTRACT PROCEDURES AND MANAGEMENT
MANUAL

contract/contractprocedures.htm

CURE
cure/cure.htm

PERSONAL SERVICES REVIEW PROGRAM
AND RELATED FORMS

www.state.co.us/hrs/contracts/index.htm

Real Estate Programs — Use of Brokerage Services

By Donna Barr, Asset Manager

Most State employees involved with leasing know that all State agencies and institutions must utilize contracted real estate brokerage services when leasing property in the six-county Denver metro area, El Paso and Pueblo counties, unless specifically exempted by Real Estate Programs. In turn, when requested by a state agency, the broker must provide the service. Regardless of the contractual obligation to utilize the brokers' services, Real Estate Programs has found that assistance from professional real estate brokers provides significant advantages to State agencies and institutions.

The broker's assistance up-front can save the agency time, money and frustration by assisting with needs assessment and space programming in connection with a specific lease. In addition, the brokers' knowledge of the real estate market can help agencies find locations that meet their needs while assuring that State dollars are spent wisely. The brokers, in collaboration with the tenant agency, will conduct the negotiations with the landlord and/or its agent. In addition, the brokers will draft the lease agreement.

However, in addition to traditional leasing services, an agency may wish to engage one of the brokers as a consultant for services such as needs assessment or market research independent of efforts on a specific lease. This article is written as a reminder that consulting services agreements between the agency and the broker must be set out in a written document that takes one of two forms:

1. The agreement must be a **State Contract** as defined in State of Colorado Fiscal Rule 3-1, **OR**
2. The agreement must be on a fully executed State of Colorado **Purchase Order Form**, which has attached to it a detailed proposal that describes the services to be provided at the respective applicable hourly rates (along with a "not to exceed" figure applicable to the project). The Purchase Order Form **should include** the following language:

"Execution of this document by or on behalf of the stated buyer constitutes the affirmation of such Buyer that all funds required for payment of this Purchase Order during the current fiscal year are and will be available for such payment, and that Buyer will make every good faith effort to see to it that such funds are also available for any further payments required on this Purchase Order in subsequent fiscal years."

If you have any questions about utilization of the State contracted brokers, contact Donna Barr at 303-866-4564 or at donna.barr@state.co.us or Clark Bolser at 303-866-4759 or at clark.bolser@state.co.us.



TOP TEN CHECKLIST

by Yvonne Anderson, (SCO) & Robert Bowers, (AGO)

1. Signatures and signature page issues:

- Interagency contracts do not need a signature block for the Attorney General.
- Contracts are being routed with photocopied signatures. Page 6-30 of the *State Contract Manual* says no photocopies. To solve this problem, the agency should prepare and have the vendor sign 4 contracts (5 for a lease contract). **NOTE:** Before the contract packet is routed to the Central Approvers, one original copy should be kept by the agency in case the other copies are lost, and an original signed contract is still available for execution.
- Some of the agency signatories are changing the way in which they sign their contracts (for example: They may use only the first initial of the first name instead of the entire first name). As a result, the signature is not exactly the same as found in the *Record of Authorized Signatures* maintained by the SCO - Central Contract Unit. If the signatory desires to change his or her contract signature, a new 'Record of Authorized Signatures' form must be prepared and submitted to the State Controller's Office.
- Proper attestations are being omitted on most contracts.

2. Encumbrance Document issues:

- Some contracts are being routed where the accompanying encumbrance document does not equal the amount set out in the contract. For audit trail purposes, the Central Contract Unit will only approve encumbrances that equal the value of the contract except in cases where a contract is 100% federally funded. Any other changes to the encumbrance must be explained in writing, signed by your agency CFO, and submitted with the contract packet.
- Some contracts are still being routed with the encumbrance document already approved, presumably by someone in the agency. **Please note that the encumbrance document should be ready for level 3 approval.** The Central Contract Unit will approve the encumbrance when the contract is executed.

3. Pagination and contract reference issues:

- Many contracts fail to paginate the *Special Provisions*. Some fail to have the correct number of pages identified (i.e. the pagination will say "Page 6 of 5" or something similar). Some contracts fail to have any pagination at all!
- Multiple page exhibits need to have some sort of page numbering. Many agencies are failing to properly identify exhibits. If a contract refers to "Exhibit A," then the attached exhibit should be marked on the first page as "Exhibit A." Also, when more than one exhibit is being attached, each exhibit should be placed in the proper order as part of the contract (i.e. - A, B, C, D or 1, 2, 3, 4 not as D, B, A, C, etc).
- Amendments, Renewals, and other similar contract modifications often improperly refer to the original contract, or to the wrong provisions in the original contract. Please double-check all references used in the body of the contract. For example, if your renewal letter says "Pursuant to Paragraph 3 (a) of the original contract....." make sure that Paragraph 3(a) of the original contract contains the authority for which you are citing.

4. **Contract effective date issues:** Please note that the *Effective Date* in most contracts should be the date the contract is signed by the State Controller. For example, "This contract shall be effective upon approval by the State Controller, or designee, or on (*estimated start date*), whichever is later." If the *estimated start date* is used without the above quoted State

Controller caveat, make sure the contract will reach the Central Approvers before the *estimated start date*. If the estimated start date passes before the contract reaches a Central Contract Approver, you will be asked to confirm in writing that the vendor has not started work and that a violation of CRS 24-30-202 has not occurred. **Finally, the initial term of the contract should not commence on a date before the effective date.**

5. **Special Provisions:** With the update of the Fiscal Rules on December 1, 2001, all agencies should be using the new *Special Provisions*. The *Special Provisions* are required in every contract, **except** interagency and lease contracts. These provisions should be part of the body of the contract **and not referred to or attached as an Exhibit** to the contract. In addition, if the *Special Provisions* are modified in any manner, a Fiscal Rule waiver must be requested by your agency CFO. The waiver can be done via an e-mail request from the CFO to the State Controller's Office. Be sure to attach a hard copy of the waiver approval to the contract packet when it is routed to the Central Approvers.
6. **Missing document issues:** Please remember to attach **ALL** appropriate documents to your contract packet prior to sending them to the Central Contract Approvers. Required documents include: a current screen print of the CLI2 and CLIN; the encumbrance document showing "ready for level 3 approval"; all exhibits/attachments referenced in the contract; program waivers/pre-approval letters/modification form for the Personal Services Review Program; and if the contract packet is for a **contract amendment**, a copy of the original contract and any other amendments/modification forms (change or der, options) related to that specific contract must be included.
7. **Mathematical issues:** Mathematical errors are being found in increasing numbers on contracts with multiple amendments. To help eliminate these errors and shorten the contract review and approval time, please **attach a spreadsheet** showing the dollar amount of the original contract and every amendment thereafter to the contract packet.
8. **Contract term issues:** Many errors have been noted with the term of the contract. Many amendments are routed to the Central Contract Approvers where the contract's ending date has not been properly extended. In some cases, the contract has actually terminated by its own terms, before an amendment or option to renew is processed.
9. **Other Issues: Advance payment:** When a contract includes language allowing for an advance payment to the contractor, please remember to obtain a Fiscal Rule waiver from the State Controller's Office **prior to** forwarding your contract through the central approval process. Your waiver request should be done via email and should be sent from your agency CFO to the State Controller's Office. By following this process, the review of your contract will not encounter any unnecessary delays.

Scope of work: Be sure that the dates contained in the scope of work **do not conflict** with the time of performance stated in the contract.

Modification Tools: Remember there is an **updated policy** on the use of modifications (effective May 1, 2002). Please note that these modifications are not universal and should not be included in all contracts.

10. **Communication:** A majority of your contract problems can be eliminated or at least the processing time shortened by contacting a Central Contract Approver to ask questions and resolve issues prior to routing the contract for approval. It is always easier to get the contract right the first time rather than having to correct a mistake during the approval process. Please call the Central Contract Unit if you have **any** question concerning state contracting or attach a memorandum to the contract packet explaining anything that is unusual about the contracting document being routed.



CCIT (Colorado Contract Improvement Team) Meeting

Wednesday, November 20, 2002

Camp George West – Golden, Colorado – Building 100

Agenda

9:00-9:05	Welcome	Phil Holtmann, SCO
9:05-10:05	Insurance Requirements	John Cook, State Risk Manager Stephen Smith, AGO
10:05-10:30	Purchasing Policy Update	Monica Rahman, SPO
10:30-10:45	BREAK	
10:45-11:00	SCAT Update	Roger Thomte
11:00-11:30	Personal Services Update	Joi Simpson, DPA/HRS
11:30-12:00	Legal Issues	Robert Bowers, AGO

